

BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 10-0366 RE
	)	
CHAD C. LIBBERT,	)	
	)	
Respondent.	)	

**ORDER OF THE MISSOURI REAL ESTATE COMMISSION**  
**DISCIPLINING THE REAL ESTATE LICENSE OF**  
**CHAD C. LIBBERT**

On or about June 8, 2011, the Administrative Hearing Commission entered its Decision in the case of *Missouri Real Estate Commission v. Chad C. Libbert, No. 10-0366 RE*. In that Decision, the Administrative Hearing Commission found that Respondent Chad C. Libbert's real estate license (license no. 2003025848) is subject to disciplinary action by the Commission pursuant to § 339.100.2 (2), (4), (15) and (16).

The Commission has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Decision of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice and §§ 621.110 and 339.100.3, RSMo Cum. Supp. 2010, the Commission held a hearing on August 10, 2011, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's license. All of the members of the Commission, with the exception of Doris Carlin, were present throughout the meeting. Rosemary Vitale participated through conference call. Further, each member of this

Commission that was present for the hearing has read the Decision of the Administrative Hearing Commission. The Commission was represented by Assistant Attorney General Craig Jacobs. Respondent was present, but was not represented by counsel. After being present and considering all of the evidence presented during the hearing, the Commission issues the following Findings of Facts, Conclusions of Law and Order.

I.

Based upon the foregoing the Commission hereby states:

**FINDINGS OF FACT**

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo Cum. Supp. 2010, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo (as amended).

2. The Commission hereby adopts and incorporates by reference the Decision and record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Chad C. Libbert, Case No. 10-0366 RE*, in its entirety.

3. The Commission set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion.

4. This Commission licensed Respondent Chad C. Libbert as a real estate salesperson, license number 2003025848. Respondent's license was current at all times relevant to this proceeding.

II.

**CONCLUSIONS OF LAW**

5. This Commission has jurisdiction over this proceeding pursuant to §§ 621.110 and 339.100, RSMo.

6. The Commission expressly adopts and incorporates by reference the Decision issued by the Administrative Hearing Commission dated June 8, 2011, in *Missouri Real Estate Commission v. Chad C. Libbert, Case No. 10-0366 RE*, and hereby enters its Conclusions of Law consistent therewith.

7. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Decision dated June 8, 2011, Respondent's real estate license is subject to disciplinary action by the Commission pursuant to § 339.100.2 (2), (4), (15), and (16).

8. The Commission has determined that this Order is necessary to ensure the protection of the public.

### III.

#### ORDER

Having fully considered all the evidence before the Commission, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the Commission that the real estate license of Chad C. Libbert (license no. 2003025848) is hereby placed on and hereby placed on **PROBATION** for five (5) years.

### IV.

#### TERMS AND CONDITIONS

During the aforementioned probation, Chad C. Libbert shall be entitled to perform as a real estate licensee subject to the following terms and conditions:

- A. During the probationary period, Respondent shall maintain full compliance with all provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo, and all rules and regulations promulgated by the Commission.

- B. During the probationary period, Respondent shall keep the Commission informed of his current work and home addresses and telephone numbers. Respondent shall notify the Commission in writing within ten days (10) of any change in this information.
- C. During the probationary period, Respondent shall timely renew his license granted hereby and shall timely pay all fees required for licensure and comply with all other Commission requirements necessary to maintain said license in a current and active state.
- D. During the probationary period, Respondent shall accept and comply with unannounced visits from the Commission's representatives to monitor compliance with the terms and conditions of this Order.
- E. During the probationary period, Respondent shall appear in person for interviews with the Commission or its designee upon request.
- F. If, at any time during the probationary period, Respondent changes his address from the state of Missouri, or ceases to maintain his real estate license current or active under the provisions of Chapter 339, RSMo (as amended), or fails to keep the Commission advised of all current places of residence, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.
- G. Upon expiration of the probationary period, Respondent's license shall be fully restored if all requirements of the law have been satisfied; provided, however, that in the event the Commission determines that Respondent has violated any term or condition of this Order, the Commission may, in its discretion, pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions or remedies concerning the allegations identified herein.
- H. The Commission retains jurisdiction to hold a hearing at any time to determine if a violation of this Order has occurred and, if a violation of this Order has occurred, may seek to amend this Order or impose further disciplinary or appropriate action at the discretion of the Commission. No order shall be entered by the Commission pursuant to this paragraph without any required notice and opportunity for a hearing before the Commission as provided by Chapter 536, RSMo (as amended).
- I. Unless otherwise specified by the Commission, all reports, documentation, notices, or other materials required to be submitted to the Commission shall be forwarded to: Missouri Real Estate Commission, P.O. Box 1339, Jefferson City, Missouri 65102.
- J. Any failure by Chad C. Libbert to comply with any condition of discipline set forth herein constitutes a violation of this Order.

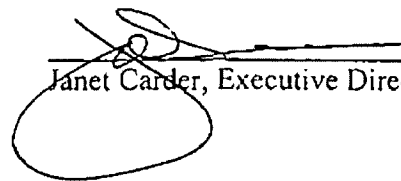
This Order does not bind the Commission or restrict the remedies available to it concerning any violation by Respondent of the terms and conditions of this Order, Sections

339.010-339.205 and 339.710-339.855, RSMo (as amended), or the regulations promulgated thereunder.

The Commission will maintain this Order as an open, public record of the Commission as provided in Chapters 339, 610, and 324, RSMo (as amended).

SO ORDERED, EFFECTIVE THIS 16<sup>th</sup> DAY OF August, 2011.

MISSOURI REAL ESTATE COMMISSION

  
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Janet Carder, Executive Director

Before the  
Administrative Hearing Commission  
State of Missouri



RECEIVED  
JUN 09 2011  
MO. ATTORNEY GENERAL

MISSOURI REAL ESTATE  
COMMISSION,

Petitioner,

vs.

CHAD LIBBERT,

Respondent.

No. 10-0366 RE

RECEIVED  
JUN 13 2011  
MREC

DECISION

Chad Libbert is subject to discipline under § 339.100.2(2), (4), (15), and (16)<sup>1</sup> for preparing a contract of sale that misrepresented the actual terms of sale and knowingly permitting this contract to be used in preparing an inaccurate settlement statement for the sale.

Procedure

On March 5, 2010, the Missouri Real Estate Commission ("MREC") filed a complaint seeking disciplinary action against Libbert's real estate salesperson license. Although the Board served Libbert with a copy of the complaint by personal service on July 30, 2010, he did not answer the complaint. We held a hearing on November 2, 2010. MREC was represented at the hearing by Assistant Attorney General Kevin Hall. Libbert represented himself. MREC filed a written argument on January 7, 2011. Libbert did not file a written argument.

<sup>1</sup>Statutory references are to RSMo Supp. 2010 unless otherwise noted.

### Findings of Fact

1. Libbert is licensed as a real estate salesperson. His license was current, active, and in good standing at all relevant times.
2. Libbert was a real estate salesperson for Coldwell Banker Gordon Company Realtors in Jefferson City, Missouri ("Coldwell") at all relevant times.
3. In 2005, Libbert represented David and Julie Kenyon ("Kenyons") in their purchase of real estate located at 809-811 Colorado Street, Jefferson City, Missouri ("Colorado Property"), for \$60,000.
4. After improvements, the Kenyons listed the Colorado Property for sale for \$75,000.
5. Julia Watson selected Libbert to serve as her agent for purchasing the Colorado Property from the Kenyons.
6. On December 30, 2005, Watson completed an application with Accord Financial, Inc. ("Accord Financial") for a residential real estate loan in the amount of \$76,500 for the purchase of property in the amount of \$85,000. The loan application represented that the borrower would provide \$8,531.14 for the purchase even though Watson was unable to pay such an amount at the time of the application. Greg Hoffmeyer of Accord Financial signed the loan application as the interviewer taking the application by telephone. Watson signed the application as the borrower.
7. On December 30, 2005, Watson signed a Contract for Sale of Residential Real Estate prepared by Libbert that offered to purchase the Colorado Property for \$85,000 and indicated that 90% of the purchase price would be financed. The contract further indicated that the seller would provide the buyer with \$4,000 for closing costs, prepaids, points, or any other expense allowed by the lender.

8. Accord Financial ultimately obtained financing for Watson through the lender Wilmington Finance, a Division of AIG Federal Savings Bank ("Wilmington Finance").

9. The Kenyons accepted Watson's offer to purchase the Colorado Property and signed the sales contract on December 31, 2005.

10. The January 9, 2006 appraisal report prepared for the lender concerning the Colorado Property indicated an appraised value of \$85,000. The appraisal report indicated the seller would pay \$4,000 of the borrower's closing costs. No other financial assistance to the borrower was indicated.

11. Prior to closing, Libbert knew Watson did not have the funds required from her at closing and Kenyon would provide the funds due at closing from Watson.

12. The closing for Watson's purchase of the property took place on January 19, 2006.

13. Cole County Abstract & Title Company served as the settlement agent for the transaction.

14. On January 19, 2006, David Kenyon obtained a cashier's check in the amount of \$8,461.03. The cashier's check listed Julia Watson as the remitter and was payable to "Cole County Abstract for 809 Colorado."

15. The cashier's check obtained by David Kenyon was used to pay the amounts due from Watson at closing.

16. At the closing, Watson and the Kenyons signed a settlement statement prepared by Cole County Abstract & Title Company for the sale of the Colorado Property that indicated \$8,361.03 had been received from Watson.

17. Libbert was present at the closing and knew the contract of sale and settlement statement were inaccurate because they represented Watson was providing \$8,361.03 at closing.



18. Libbert knew the contract of sale and settlement statement would be relied upon by the lender when determining to fund Watson's purchase.

### Conclusions of Law

We have jurisdiction.<sup>2</sup> MREC has the burden of proving by a preponderance of the credible evidence Libbert committed an act for which the law allows discipline.<sup>3</sup>

"'Preponderance of the evidence' is defined as that degree of evidence that 'is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows the fact to be proved to be more probable than not.'"<sup>4</sup> MREC meets this burden by substantial evidence of probative value or by inferences reasonably drawn from the evidence.<sup>5</sup>

This Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony of any witness.<sup>6</sup> When there is a direct conflict in testimony, we must make a choice between the conflicting testimonies.<sup>7</sup> Our findings of fact reflect our credibility determinations.

MREC argues that there is cause for discipline under § 339.100:

2. The [MREC] . . . may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

\* \* \*

(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the

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<sup>2</sup>Section 621.045.

<sup>3</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

<sup>4</sup>*State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App., W.D. 2000).

<sup>5</sup>*Farnham v. Boone*, 431 S.W.2d 154 (Mo. 1968).

<sup>6</sup>*Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App., W.D. 1992).

<sup>7</sup>*Id.*

conduct of his or her business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

\* \* \*

(4) Representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon;

\* \* \*

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the [MREC] . . . to refuse to issue a license under section 339.040;

\* \* \*

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

#### I. Substantial Misrepresentations – Subdivision (2)

Misrepresentation is a falsehood or untruth made with the intention of deceiving.<sup>8</sup>

MREC asserts there is cause to discipline Libbert because he contacted Kenyon and arranged for Kenyon to provide Watson with the funds she needed at closing. MREC further asserts Libbert knowingly allowed the settlement statement to be prepared incorrectly to indicate Watson had provided funds at closing. MREC asserts Libbert's actions deceived the lender into believing Watson provided approximately ten percent of the purchase price for the Colorado Property. Libbert's purpose was to induce the lender into issuing Watson the loan.

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<sup>8</sup>WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1445 (unabr. 1986).

We do not find sufficient evidence to conclude Libbert arranged for Kenyon to provide the funds to Watson. We do find, however, Libbert knew Watson did not have sufficient funds for closing and that Kenyon provided the funds required of Watson. Although Libbert denied such knowledge at hearing, we did not find his denial credible due to inconsistencies in his testimony at the hearing. We find that he previously admitted having such knowledge to the Board's investigator. We find the Board's investigator to be a credible witness because of the consistency of his testimony.

Libbert prepared the contract of sale upon which the settlement statement was based. At closing, Libbert knew the contract of sale inaccurately reflected Watson as providing funds at closing for a down payment. Libbert knew the settlement statement prepared based upon the contract of sale inaccurately reflected the same. Libbert knew the lender would rely upon the contract of sale and settlement statement in determining whether to fund Watson's purchase of the Colorado Property. Therefore, we find Libbert intentionally deceived the closing agent and lender when he permitted the inaccurate contract of sale to be used to prepare an inaccurate settlement statement.

We find cause to discipline Libbert under § 339.100.2(2).

## II. Inflating Sales Price – Subdivision (4)

Libbert knew Kenyon provided Watson with the funds she needed at closing, which represented a constructive reduction in the price of the Colorado Property. Libbert knew of this reduction, but permitted the contract of sale he prepared to be used to prepare an inaccurate settlement statement provided to the lender. By representing that Watson provided funds at closing, the settlement statement and contract of sale hid the constructive reduction in the sale price and misled the lender as to the true sale price of the Colorado Property. Therefore, we find Libbert had prepared false documents representing to the lender an amount in excess of the true

and actual sale price of the real estate and terms of sale different from those actually agreed upon by Watson and Kenyon.

We find cause to discipline Libbert under § 339.100.2(4).

III. Violation of Statute – Subdivision (15): Failing to Fulfill Duties under § 339.740

Section 339.740<sup>9</sup> provides in part:

1. A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

(1) To perform the terms of any written agreement made with the client;

(2) To exercise reasonable skill and care for the client;

(3) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(a) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;

(b) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;

(c) Disclosing to the client adverse material facts actually known or that should have been known by the licensee; and

(d) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(4) To account in a timely manner for all money and property received;

(5) To comply with all requirements of sections 339.710 to 339.860, subsection 2 of section 339.100, and any rules and regulations promulgated pursuant to those sections; and

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<sup>9</sup>RSMo 2000.

(6) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

Libbert's preparation of an inaccurate contract of sale and permitting its use to prepare an inaccurate settlement statement represents a failure to exercise reasonable skill and care for Watson in this transaction. Watson relied upon Libbert's guidance in this transaction, and Libbert failed to promote Watson's interest with the utmost faith, loyalty, and fidelity by permitting an inaccurate contract of sale and settlement statement to be used at closing.

MREC further asserts Libbert misrepresented the price of the Colorado Property to Watson, which was fraudulent, misleading, and in violation of applicable federal and state laws and regulations that MREC does not identify. We, however, find insufficient evidence to conclude Libbert misrepresented the price of the Colorado Property to Watson or that his actions as to Watson were thereby fraudulent, misleading, or in violation of applicable federal and state laws and regulations unidentified by MREC. It seems from the evidence that Watson might have played a part in this scheme in order to obtain a mortgage for the Colorado Property.

We find cause to discipline Libbert under § 339.100.2(15) for the preparation of an inaccurate sales contract, but not for misrepresenting the price to Watson.

#### IV. Grounds for Refusing to Issue a License – Subdivision (16)

The MREC argues there is cause for discipline under this subdivision because Libbert engaged in conduct that would be grounds for refusing to issue him a license. Section 339.040.1 states:

Licenses shall be granted only to persons who present . . . satisfactory proof to the [MREC] . . . that they:

- (1) Are persons of good moral character; and
  - (2) Bear a good reputation for honesty, integrity, and fair dealing;
- and

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

#### A. Good Moral Character

Good moral character is honesty, fairness, and respect for the law and the rights of others.<sup>10</sup> We find Libbert lacks good moral character because he knowingly drafted a contract of sale and permitted the use of a settlement statement that falsely reflected the source of the down payment to mislead the lender.

#### B. Reputation

Reputation means “the estimation in which one is generally held: the character commonly imputed to one as distinct from real or inherent character [.]”<sup>11</sup> Reputation is “a consensus view of many people[.]”<sup>12</sup> MREC failed to present any evidence of Libbert’s reputation. As a consequence, we cannot conclude that Libbert does not have a reputation for honesty, integrity, or fair dealing.

#### C. Competency

Competency, when referring to occupation, is the “the actual ability of a person to perform in that occupation.”<sup>13</sup> Incompetency is a “state of being” amounting to an inability or unwillingness to function properly in an occupation.<sup>14</sup> The disciplinary statute does not state that licensees may be subject to discipline for “incompetent” acts; it states that a license shall be granted only if the prospective licensee is “competent.” This evaluation necessitates a broader-scale analysis, taking into account the licensee’s capacities and successes. While Libbert’s

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<sup>10</sup>*Hernandez v. State Bd. of Regis’n for the Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997).

<sup>11</sup>WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1929 (unabr. 1986).

<sup>12</sup>*Haynam v. Laclede Elec. Coop, Inc.*, 827 S.W.2d 200, 206 (Mo. Banc 1992).

<sup>13</sup>See Section 1.020(8), RSMo 2000 (defining “incompetent” in relation to occupation ability).

<sup>14</sup>*Albanna v. State Bd. of Regis’n for the Healing Arts*, 293 S.W.3d 423, 435 (Mo. banc 2009).

actions in the sale of the Colorado Property displayed an unwillingness to function properly as a real estate salesperson in this transaction, we do not find this single incident sufficient to find he is not competent.

For the foregoing reasons, we find cause to discipline Libbert under § 339.100.2(16).

V. Other Conduct – Subdivision (19)

The adjective “other” means “not the same : DIFFERENT <any [other] man would have done better>.”<sup>15</sup> Therefore, subdivision (19) refers to conduct different than referred to in the remaining subdivisions of the statute. We have found the conduct at issue is cause for discipline under § 339.100.2(2), (4), (15), and (16). MREC has not identified any “other” conduct we have not already addressed. Therefore, we do not find cause to discipline Libbert under § 339.100.2(19).

**Summary**

We find cause to discipline Libbert under § 339.100.2(2), (4), (15), and (16).

SO ORDERED on June 8, 2011.

  
SREENIVASA RAO DANDAMUDI  
Commissioner

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<sup>15</sup>WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1598 (unabr. 1986).